



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MRA-66/46722

PRELIMINARY RECITALS

Pursuant to a petition filed November 6, 2000, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Washington County Dept. of Social Services in regard to Medical Assistance (MA), a hearing was held on December 1, 2000, at West Bend, Wisconsin. The record was held open for 30 days to for submission of additional information.

The issue for determination is whether a community spouse is eligible for additional income allocation from the institutionalized spouse under provisions of the Spousal Impoverishment program.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Wisconsin Department of Health and Family Services  
Division of Health Care Financing  
1 West Wilson Street, Room 250  
P.O. Box 309  
Madison, WI 53707-0309

By: Maxine Ellis, ESS  
Washington County Dept Of Social Service  
333 E. Washington Street  
Suite 3100  
West Bend, WI 53095

EXAMINER:

Kenneth P Adler  
Administrative Law Judge  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (SSN [REDACTED] CARES [REDACTED]) is a resident of a skilled nursing facility. Petitioner's spouse resides in the community in Washington County.
2. Petitioner is eligible for spousal impoverishment MA. He has gross monthly income of \$1306.
3. During November 2000 petitioner's MA eligibility was reviewed. At that time his community spouse requested an increase in the income allocation from her institutionalized husband.
4. On 11/20/00 the county agency issued a notice of decision. At that time the community spouse's gross income was approximately \$1594.33 per month from her employment. The Minimum Monthly Maintenance Needs Allowance (MMMNA) for a community spouse is \$1963.50 so the county agency concluded the community spouse was eligible for a monthly income allocation from petitioner of \$369.17 to raise her income to the MMMNA. Petitioner's patient liability (cost of care contribution) was calculated at \$822.83. Exhibit 3
5. The community spouse injured her back at work and stopped working on 11/12/00. At the time of the hearing she was receiving worker's compensation at the rate of \$920 per month. This, combined with the income allocation from petitioner, resulted in total monthly income of \$1,289.
6. The community spouse presents the following monthly expenses:

Household expenses	\$ 729.00
Vehicle expenses	\$ 566.00
<u>Living expenses</u>	<u>\$ 747.00</u>
Total	\$2,042.00
7. The community spouse has outstanding consumer debt of \$19,382.96. Following the hearing the community spouse contacted a debt consolidator who reviewed the debt and established a three-year repayment plan. If the community spouse makes monthly payments of \$861 on her consumer debt it would be erased in three years or less.

### DISCUSSION

The issue for determination is whether the community spouse is eligible for an additional income allocation from her institutionalized spouse. The community spouse presents a large amount of consumer debt which, combined with her monthly living expenses, results in monthly obligations exceeding her current income allocation from petitioner.

The current Minimum Monthly Maintenance Needs Allowance (MMMNA) is the *lesser* of \$2,103.00 per month, or \$1,875 plus the amount of shelter expenses incurred each month by the community spouse which exceed \$562.50, known as the "excess shelter allowance". Wis. Stat. §49.455(4)(b), MA Handbook, App. 23.0.0(05-01-00). The MMMNA is considered to be the amount of monthly income the spouse of an individualized individual requires to continue residing in the community and meeting his or her basic maintenance needs.

The Community Spouse Income Allocation (CSIA) is the amount which a particular community spouse is determined to need to continue residing in the community and may actually exceed the MMMNA. The CSIA is defined as the greater of the MMMNA or an amount determined by a fair hearing. Wis. Stat. §49.455(4)(b).

Administrative law judges have the authority to increase the CSIA above the MMMNA where the MMMNA is insufficient to meet a particular community spouse's basic maintenance needs. Wis. Stat.

§49.455(8)(c); Wis. Admin. Code §HFS 103.075(8)(c); MA Handbook, Appendix 23.6.0.A. However, an increase in the CSIA above the MMMNA can be made through the fair hearing process only if it is established that the community spouse requires income above the level provided by the MMMNA due to the existence of "exceptional circumstances resulting in financial duress" for the community spouse. Wis. Stat. §49.455(8)(c); Wis. Admin. Code §HFS 103.075(8)(c).

The term "exceptional circumstances resulting in financial duress" is defined as situations which result in the community spouse being unable to provide for his or her own necessary and basic maintenance needs. Wis. Admin. Code §HFS 103.075(8)(c), Wis. Adm. Code; see also, MA Handbook, Appendix 23.6.0.A3 (last paragraph). Payment on consumer debt which is a legally enforceable obligation can be considered in this situation.

As stated above, the purpose of the spousal income allocation is to allow the community spouse to remain in the community and provide for basic maintenance needs. In this particular case there has been no assertion the community spouse is providing for anything but her basic needs. The county agency did not dispute the financial information presented by the community spouse but explained it does not have the authority to order an amount above the statutory CSIA.

The question is whether the community spouse is eligible for an additional allocation from her petitioner to continue to reside in the community. The community spouse's monthly expenses total \$2,042. While cigarettes (\$98) and cable (\$33) can be removed from the expenses necessary to reside in the community, the monthly living expenses still total \$1,911. At the time of the initial determination by the county, the community spouse's total monthly living expenses of \$1,911 did not exceed the current MMMNA of \$1,963.50.

However, at the time of the hearing the community was no longer working. Therefore the monthly earned income figure of \$1,594.33 was no longer accurate. At the hearing petitioner verified she had left work due to a back injury and had begun receiving worker's compensation at the rate of \$920 per month. This, combined with the current allocation from petitioner of \$369.17 only results in a total monthly income for the community spouse of \$1,289.17 – well below the MMMNA of \$1,963.50 calculated by the county agency. Based upon that change in circumstance alone, the community spouse would be eligible for an additional \$674.33 allocated from petitioner without an order from an administrative law judge.

However, the primary issue is the fact the MMMNA of \$1,963.50 does not meet the community spouse's financial obligations. Therefore, the community spouse requests all of petitioner's monthly available income of \$1,192 be allocated to her. For the time being, while the community spouse remains off full-time work and continues to receive worker's compensation, this would result in total monthly income to the community spouse of \$2,112. This amount covers the community spouses verified monthly living expenses of \$1,911 and leaves \$201 for monthly payments against the almost \$19,382.96 in debt.

Prior decisions of this office have concluded consumer debt is a justified expense of continuing to reside in the community. MRA 28/13666. Following the hearing the community spouse consulted a debt consolidation service to attempt to organize her obligations into one monthly payment. To pay off those obligations within a three year period of time, the community spouse would need to make monthly payments of \$861 in addition to her monthly living expenses of \$1,911 for a total of \$2,772.

Unfortunately, even if the community spouse had all her husband's income allocated to her, her monthly income would be \$2,112 (current income of \$920 plus allocation of all of petitioner's available income of \$1,192) – well below the amount necessary to meet her combined monthly living expenses and other financial obligations.

Based upon the above, I conclude the community spouse has financial circumstances which require all her institutionalized spouse's income be allocated to her for the period she remains off full-time work and receives worker's compensation. When the community spouse returns to full-time work and stops receiving worker's compensation she must report that employment change to the county agency. At that time another income allocation will be completed based upon her financial situation. If the community spouse again requires income above the established level, she will have to file another fair hearing at that time. However, her financial obligations will likely remain the same, so preparation for that proceeding should be easy the primary issue will be how her income has changed in relation to her financial obligations.

### CONCLUSIONS OF LAW

1. That due to exceptional circumstances, petitioner's wife requires an allocation of \$1,192, in addition to her monthly worker's compensation income, to avert financial duress.
2. That the new Community Spouse Income Allocation for this case is \$2,112 (\$920 worker's compensation + \$1,192 income allocation from petitioner).

NOW, THEREFORE, it is

### ORDERED

*That the matter be remanded to the county agency with instructions to allocate all petitioner's available income of \$1,192 (\$1,306 - \$40 personal need allowance - \$74 health insurance payment) to the community spouse effective immediately. This action is to be taken within ten (10) days of the date of this decision.*

### REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

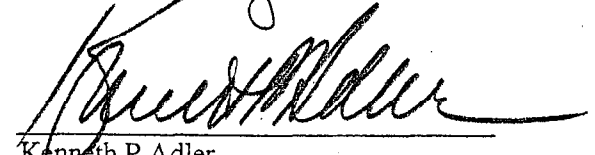
### APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of  
Madison, Wisconsin, this 1 day  
of February, 2001.



Kenneth P. Adler  
Administrative Law Judge  
Division of Hearings and Appeals  
130/KPA

cc: WASHINGTON COUNTY DEPT OF SOCIAL SERVICES  
DHFS - Susan Wood